that the 2nd lot of 198 logs was not delivered to the respondent at the site of the sawmill.

In regard to the 4 logs, apart from the reasons given by the learned trial judge, the debit note, Exhibit P.7, clearly shows that, despite the acknowledgement of receipt of 22 logs by the respondent, only 18 logs were towed to the respondent's sawmill down the river. No evidence was called to prove that the remaining 4 logs were ever delivered to or removed by the respondent. We again see no reason to upset a finding of fact by the trial judge.

In regard to the claim for damages arising out of the short-supply of timber, it is clear from the evidence that had the appellants delivered the 2nd lot of 198 logs at the site of the sawmill, the total amount delivered would have far exceeded the minimum requirement. It is not denied that 198 logs were dumped some distance away from the sawmill. There is also no doubt that the logs were measured by the Forest Department and the appellants had paid the royalty on them. The breach of contract in this case was not a repudiation of the contract as a whole but a failure to deliver one consignment within 500 feet of the mill, owing to want of space. The contract provides that the measure of damages should be the difference between the agreed price and the prevailing market price to the extent of the amount in short supply plus transport expenses. The law, however, imposes a duty on every person who suffers damages on account of breach of contract to take reasonable steps to mitigate the damage. In *Anson's* Principles of the English Law of Contract, 22nd Edition, at page 504, the following passage appears:—

"It also follows from the rule that damages are compensatory only that one who has suffered loss from a breach of contract must take any reasonable steps that are available to him to mitigate the extent of the damage caused by the breach. He cannot claim to be compensated by the party in default for loss which is really due not to the breach but to his own failure to behave reasonably after the breach.

"Thus, although the measure of damages for breach of a contract to deliver goods is ordinarily the difference between the contract price of the goods and the market price at the time when delivery should have been given, yet if the plaintiff might have mitigated his loss, for example, by any immediate purchase at a low price of goods to replace those not delivered, or by accepting a reasonable offer from the defendant to make good part of the loss, this is to be taken into account in assessing his damages (*Brace* v. *Calder*,(1) *Payzu Ltd.* v. *Saunders* (2)). It is a question of fact in each case whether he has acted as a reasonable man might have been expected to act, and he is not required to risk his commercial reputation *Finlay (Fames) & Co., Ltd.* v. *N.V. Kwik Hoo Tong H.M.*(3)) or to embark upon complicated litigation (*Pilkington* v. *Wood*,(4)) in order to mitigate his loss."

In the instant case, there was no need for the respondent to have gone to the expense and trouble of buying logs from elsewhere when the logs were lying a few hundred feet away from the sawmill for the mere taking and all that was required was additional expense for hauling them up to the sawmill. Instead of doing that, the respondent claims to have purchased timber to make good the shortage and produced certain bills which were admitted in evidence and marked Exhibit D.5. It is significant that the learned trial judge did not refer to them in his judgment. He must have had a good reason for ignoring them. They relate to purchases made between May and August, 1965 and the transactions appear too remote to be connected with the appellants' failure to deliver timber in June, 1964.

We think that the appropriate damages to be awarded in this case should be the approximate cost of hauling the lodge to the sawmill. The respondent said in evidence that in August, 1964, after the appellants had sold their timber concession to Kinabalu Company, they offered to arrange with that company to haul the logs to the sawmill but he had rejected the offer. He also said and I quote: "The Kinabalu Company wanted $1,000. I told them I could not pay. Finally they accepted $200 for hauling the logs. The tractor did not tow the the logs. It did not go at all." In our opinion, the appropriate amount of damages to be awarded in this case should be $1,000.

The appeal against the judgment of the court below in respect of a claim in the suit is hereby dismissed with costs and we allow the appeal in respect of the counter-claim by reducing the amount awarded to $1,000 with the cost of the appeal to the appellants.

Azmi L.P. and **Ismail Khan C.J. (Borneo)** concurred.

Appeal in respect of the claim dismissed; Appeal in respect of the counter-claim allowed.

LEONG GAN & ORS. v. TAN CHONG MOTOR CO. LTD.

[O.C.J. (Raja Azlan Shah J.) January 31, 1969]
[K.L. — Civil Suit No. 1970 of 1968]

Contract — Evidence — Admissibility of oral evidence to vary terms of written agreement — Lease which had been registered — Oral agreement between parties — Whether admissible — Evidence Ordinance, 1950, s. 92.

Evidence — Admissibility of oral evidence to vary term of written agreement — Evidence Ordinance, 1950, s. 92.

Practice and Procedure — Action for recovery of land — Order 14.

Under the terms of 2 leases both duly registered, a piece of land owned by the applicants was leased to the respondents for a period of 4 years. In an

action to recover possession of the land, the applicants applied for leave to sign final judgment under R.S.C., O 14. The application was opposed on the ground that the parties had orally agreed that the respondents would occupy the land for a period of 12 years, and that in the circumstances, a triable issue had been raised.

Held: (1) it is settled law that where the words of a written agreement are required by law to be registered, extrinsic oral evidence is inadmissible to vary or modify the terms of the written agreement;

(2) the application to sign final judgment was therefore allowed with costs.

Case referred to:—

(1) *Mark D'Cruz* v. *Jitendra Nath Chattejee* (1919), I.L.R. 46 Cal. 1079.

CIVIL SUIT.

R. Talalla for the applicants.

Eugene Lye (*D.S. Nath* with him) for the respondents.

Cur. Adv. Vult.

Raja Azlan Shah J.: This is an application for leave to sign final judgment under Order 14.

The applicants are undisputed owners of a piece of land held under Selangor Certificate of Title No. 8697 for Lot No. 492, Section 42, in the Town and District of Kuala Lumpur. By two memoranda of lease, i.e. Presentation No. 94747 dated 5th January, 1965, and Presentation No. 98822 dated 7th January, 1966, (referred to herein as "the first lease" and "the second lease" respectively), both duly registered with the proper registering authority, they leased two separate portions of the said land to the respondents for a period of four years each which in terms expired on 30th September, 1968. Two clauses which are the same in both leases are material for our present purposes; clause 1(j) provides for quiet and peaceful delivery of vacant possession, and clause 3(b) provides for option for renewal, and I quote it in full:—

"The lessee shall have no option for the renewal of this lease but if before three calendar months from the expiry of this lease the lessee shall in writing request the lessors to grant the lessee a renewal of this lease and if the lessors should agree to comply with the lessee's said request the lessors will renew this lease for a further period of four (4) years upon the same terms as in this lease contained save and except that the rent will be increased but not beyond a sum calculated at the rate of dollars seven thousand two hundred only ($7,200) per annum and save and except further that this clause will not be included in the renewal lease."

The respondents, in spite of repeated requests, have failed to deliver vacant possession. They opposed the application on two main grounds: (1) an oral agreement to the effect that the parties had agreed that the respondents would occupy the portion referred to in the first lease for a period of twelve years, which period would be split up and be subject to different leases from time to time of four years each, commencing with lease Presentation No. 69169 dated 30th December, 1963, and renewed for a further period of four years, *vide* Presentation No. 94747. The second lease, i.e. Presentation No. 98822, was executed for the residue of the aforesaid period of twelve years but was in terms made terminable on 30th September, 1968; and (2) clause 3(b) is in favour of the respondents upon its proper construction in law and that in the circumstances there is a triable issue and a *bona fide* counterclaim for damages.

Mr. Richard Talalla for the applicants objected to ground (1), contending that it violates the provisions of section 92 of the Evidence Ordinance in that it tends to vary or modify the terms of the said leases. I agree with that contention. Without quoting any authorities, it is settled law that where the words of a written agreement are required by law to be registered extrinsic oral evidence is inadmissible to show that the registered lease was not meant what it purports to be, subject to the exceptions contained in the several provisos. No evidence was called forth to bring the case within any of those provisos. There is no doubt that the said two leases which are the contract in question were reduced to writing, and inasmuch as they were leases for a period of four years each, they were required by law to be reduced to writing and it was also necessary to register them. Therefore if the alleged agreement, which is relied on by the respondents, amounted to a rescission or a modification of the said leases, evidence of that agreement could not be given inasmuch as the alleged agreement was made orally. In my judgment the respondents' first contention falls to the ground.

On the second ground it is established that a notice in writing of the lessee's intention to take a renewal was not given before three calendar months from the expiry of the said lease. Such a notice, in order to comply with the terms of clause 3(b), ought to have been given on 30th June, 1968, at the latest. It was not so given: see *Mark D'Cruz* v. *Jitendra Nath Chattejee*.[1]

For these reasons I think that there is neither a triable issue nor a *bona fide* counterclaim.

The application therefore is allowed with costs.

Application allowed.

Solicitors: *R. Talalla & Co.; Eugene Lye & Co.*